Counsel for the defendants relied on certain authorities which were all cases where the appellate court had allowed further evidence to be called on appeal, but admitted he could not uncover any case directly in point. He however produced a number of authorities to show that in certain cases further evidence was allowed to be led on appeal.

Now such evidence on appeal is normally let in under the provisions of R.S.C. Order 58 r. 4 and it could be argued against this application that there is no such rule in the R.S.C. for calling further evidence at the close of the case of one party other than by way of rebuttal and that the case of *Re Chennell* [1] on which the defendants relied, a case of exclusion at the hearing of evidence which had been before the judge in chambers, was not particularly in point.

After due consideration, I take the view that if under certain conditions, further evidence was allowed to be adduced on appeal, such evidence should under the same conditions be adducible at the hearing in the first instance, even though the side seeking to adduce such evidence had closed its case. An appeal is always by way of rehearing and if such evidence is let in at the appellate stage where the case is being reheard, I for one can see no justification for its exclusion when the case is being heard.

These conditions have been stated in many authorities. I take the statement of Denning L.J. (as he then was) in the case of *Ladd* v. *Marshall,* [2] (at page 1491) as being, with respect, the most succinct:

> "To justify the reception of fresh evidence or a new trial, three conditions must be fulfilled: first, it must be shown that the evidence could not have been obtained with reasonable diligence for use at the trial; secondly, the evidence must be such that, if given, it would probably have an important influence on the result of the case, though it need not be decisive; thirdly, the evidence must be such as is presumably to be believed, or in other words, it must be apparently credible, though it need not be incontrovertible."

Now the matter in dispute in this suit is the ownership of a piece of land. The name of the registered proprietress at a certain stage was Yah binti Che Aji, which is the name by which the plaintiff is now known, though it would appear that she was earlier known as Sabariah. She says the land was applied for by her husband and registered in her name before her divorce and that subsequently she handed the document of title to her half-sister Hamsiah binti Che Aji, who consequent on her pilgrimage to Mecca became known as Haji Rogayah which was by the familiar process of diminution of names shortened to Yah. Haji Rogayah is now dead but before her death she had the land transferred to the defendants who are members of her family.

Counsel for the defendants now seeks to call the Secretary to the Religious Affairs Department to produce the divorce register to prove that the evidence of the plaintiff was contradicted by the particulars therein and also one Haji Saad who claims to know the parties personally. Counsel bases his application on two grounds (1) Haji Saad was away in Mecca and could not be called earlier, and (2) it was impossible for him to uncover this evidence beforehand. It seems to me however having regard to the conduct of the case that Haji Saad was discovered only subsequent to the closing of the defendants' case. There had never been shown any embarrassment on the part of the defendants to have the case heard and there never was any application for an adjournment or thought of one at the hearing. It is alleged by counsel for the defendants in a short statement from the Bar that it was impossible for the defendants to know beforehand, but why it was impossible has never been made clear to me. The divorce register was available at all times. Reasonable diligence if applied would surely have uncovered it.

It seems to me after due consideration that while the second and third conditions of Lord Denning's statement might have been met (on this I express no firm opinion), counsel for the applicant has singularly failed to satisfy the first condition. I do not think it is open to me to waive this condition. The application is therefore disallowed.

Application disallowed.

Solicitors: *C.C. Goh; Lim Cheng Ean & Co.*

RAMASAMY v. SUPPIAH

[O.C.J. (Chang Min Tat J.) May 27, 1969]

[Ipoh — Civil Suit No. 139 of 1964]

Moneylending — Memorandum of loan supplied to defendant — Whether memorandum a promissory note — Whethere memorandum has to be translated and interpreted to defendant — Moneylenders Ordinance, 1951, ss. 16 & 27.

In this case the plaintiff, a licensed moneylender, sued for repayment of a sum of $500 alleged to be lent by him to the defendant. It was alleged by the defendant that he was not given a copy of the I.O.U. chit or the said memorandum, since he did not understand the English language.

Held: (1) on the facts the defendant had not rebutted the presumption contained in the acknowledgement in the memorandum authenticated by the plaintiff;

(2) as the memorandum in this case was not a promissory note there was no requirement that it should be translated or interpreted to the borrower.

Case referred to:—

(1) *Akbar Khan* v. *Attar Singh* [1936] 2 All E.R. 545 at p. 549.

CIVIL SUIT.

P.P. Dharmananda for the plaintiff.

A. Mahendran for the defendant.

Cur. Adv. Vult.

Chang Min Tat J.: In this action the plaintiff, a licensed moneylender, sued for the repayment of a sum of $500 alleged to be lent by him to the defendant and arrears of interest standing at $540 and for interest. The defence was a denial of the loan and allegations of breaches of the Moneylenders Ordinance, 1951.

It will be convenient to deal with the facts first. The plaintiff produced as evidence of the loan an I.O.U. chit and a memorandum of the loan, both signed by the defendant. The defendant admitted that he did sign the I.O.U. and the memorandum but alleged that he did so only by way of taking over a debt due from his brother. Now this was originally a debt of $106 taken by the defendant's brother from the plaintiff. The defendant was not at all sure when this loan was incurred but it would appear from a witness of his who was rather more intelligent that this was in 1957. According to the defendant and his witnesses when the defendant's brother desired to go to India, he passed over the responsibility for the repayment of $106 to the defendant and the defendant in accepting the responsibility for this loan was asked to sign an I.O.U. chit for $500. That was in 1958. Even having regard to the abnormal rates of interest charged, *sub rosa*, by the moneylenders, if I believe all the allegations made in court against moneylenders, I cannot understand how a sum of $106 can grow into a sum of $500 in the course of a year. I consider the evidence of the defendant extremely unconvincing and as a matter of fact I find that the defendant was in fact lent the sum of $500 by the plaintiff.

I now come to the defence at law. It is alleged by the defendant that he was not given a copy of the I.O.U. chit or the memorandum of the loan, nor did he understand the contents of the I.O.U. or the said memorandum, since he does not understand the English language. Generally it is said that the transaction is contrary to the Moneylenders Ordinance and that the provision (sic) of this Ordinance is contravened. He however admits signing the I.O.U. chit and the memorandum. There is in the memorandum a signed acknowledgment that he had received the sum of $500, that he had signed the memorandum and that a copy of the said memorandum authenticated by the plaintiff was delivered to and received by him. In the absence of good and convincing evidence to the contrary and having regard to the fact that the defendant has told what appears to me to be a very unlikely story, I think I must follow authority and hold that the defendant had not rebutted the presumption in the acknowledgment. It is however admitted by the plaintiff that no copy of the I.O.U. was given to the defendant but an I.O.U. is only an acknowledgment of the debt or an evidence of an account. And on a proper reading of section 16 of the Moneylenders Ordinance I find that it is not necessary that the copy of the I.O.U. be given as long as a memorandum of the loan is given.

There is also in section 16 as I read it no requirement that the memorandum should be translated or interpreted to a borrower who is not versed in the language in which it is written. Section 16 refers to two different documents: (1) a note or memorandum in writing of the contract which must be either in the English language or in Romanised Malay, and (2) a security given by the borrower. But there is no statutory requirement that the memorandum should be the security as in the case of a promissory note. The memorandum in this case was clearly stated to be a memorandum under section 16 and as I understand it, it is a deliberate choice of the parties to the contract that this memorandum is not meant to be a security and is not a promissory note. I do not think that the first paragraph therein couched in the following terms "The principal sum shall be payable on demand together with interest thereon from the date of loan to the date of demand at the rate aforesaid" imports an undertaking to pay or even an implied promise to pay. In the absence of any promise to pay, it cannot be a promissory note: see *Akbar Khan* v. *Attar Singh.*[1] Section 27 requires that when a promissory note is taken as security for any loan and the borrower does not understand the written language of the note, the note must be explained to him and attested by one of the responsible persons named in the section. If the memorandum is not a promissory note then it follows that it need not be attested. It may be that in so limiting its operation to promissory notes and not to memoranda of loan, section 27 may have failed to extend the protection given in section 16 to the unfortunates in this country who have occasion to resort to moneylenders but the cure to this defect, if at all a defect, lies in parliamentary intervention and not in forcing a judicial decision.

I can find no breach of the Moneylenders Ordinance and the claim must therefore be allowed. There will be judgment for the plaintiff in the sum of $1,040 and interest on the principal sum of $500 at 18% per annum from the date of filing to judgment and thereafter at 6% till date of payment. As for costs, this case of course should have been filed and heard in the lower courts and therefore the

proper order for costs should be costs as assessed on the subordinate courts scale.

Judgment for the plaintiff.

Solicitors: *Dharmananda & Co.; A. Mahendran.*

SELCO (SINGAPORE) LTD. v. JEAN DELPORTE

[F.C. (Chua, Kulasekaram & Choor Singh JJ.) May 28, 1969]

[Singapore—Federal Court Civil Appeal No. Y2 of 1969]

Practice and Procedure — Security for costs — Order extending time for furnishing of such security — Jurisdiction of court to extend time — Whether defendants deprived of right to have action dismissed — R.S.C. 1934, O. LI r. 2(2) and O. LXII r. 5(2).

The respondent who resided in Belgium commenced legal proceedings against the appellants. The appellants applied for and obtained an order requiring him to pay the sum of $1,000 into court as security for costs within three weeks from 22nd November, 1968. The respondent made an application for the security for costs to be given by way of guarantee. The application was made before the expiry of the time within which the security had to be furnisned, but it was heard after such time. It was dismissed. The respondent was given one week to comply with the order of the 22nd November, 1968. The appellants appealed against that part of the order extending the time for security of costs to be furnished on the ground that it deprived them of their right to make an application under R.S.C., O. LXII r. 5(2) for the action to be dismissed by reason of the respondent's default in furnishing the security within the prescribed time.

Held, dismissing the appeal: (1) a judge making an order may give directions on matters consequential to such order which may seem just. The court has an inherent jurisdiction to extend the time fixed by it for the doing of an act;

(2) the appellants had not been completely deprived of their right to invoke O. LXII r. 5(2). There was no certainty that such application would be granted. The respondent's conduct was consistent with the fact that he was making every effort to comply with the order of 22nd November, 1968. It was right and proper that the extension of time be granted to him to furnish the security for costs.

FEDERAL COURT.

K.S. Chung for the appellants/defendants.

A.P. Godwin for the respondent/plaintiff.

Cur. Adv. Vult.

Chua J. (delivering the judgment of the court): The plaintiff resides in Belgium. By an order of court dated the 22nd November, 1968, (made by the learned Chief Justice), the plaintiff was required to give security for the defendants' costs in the sum of $1,000 to be paid into court within three weeks. On the 6th December, 1968, the matter was brought before the learned Chief Justice at the request of the solicitors for the plaintiff who were seeking an order that the security for costs ordered be furnished by way of guarantee. The learned Chief Justice was of the view that the manner in which it was sought to have the matter heard was misconceived as an application should have been made by summons. On the 13th December, 1968, the solicitors for the plaintiff took out a summons seeking an order that the security for costs ordered be furnished by way of guarantee. Before the summons was heard the defendants took out a summons on the 27th December, 1968, seeking an order that the action of the plaintiff be dismissed for want of prosecution pursuant to Order LXII rule 5(2) of the Rules of the Supreme Court, 1934. The plaintiff's summons was heard by the learned Chief Justice on the 7th January, 1969. The application of the plaintiff was refused but the plaintiff was granted one week within which to comply with the order of the 22nd November, 1968. The summons of the defendants was adjourned. It is against the order of the 7th January, 1969, granting the plaintiff a week to comply with the order of the 22nd November, 1968, that the defendants now appeal.

It is submitted on behalf of the defendants that the learned Chief Justice was wrong in granting the plaintiff an extension of one week when the plaintiff did not ask for it. We are unable to accept this submission. By Order LI rule 2(2) the learned Chief Justice upon hearing the application of the plaintiff "may make any order, and give any directions relative to, or consequential on, the matter of such application as are just." It cannot be argued that the order granting the plaintiff a week to comply with the order of the 22nd November, 1968, was not "consequential on the matter of such application." Furthermore, it is our view that where time is fixed by the court or a judge for doing some act, the court has inherent jurisdiction to extend the time.

It is further submitted that the learned Chief Justice was wrong in granting the extension as there was no ground advanced by the plaintiff for the extension and that there was no evidence to justify the extension. With this submission we also cannot agree. When the learned Chief Justice heard the plaintiff's application he had the file of the suit before him and consequently when he exercised his discretion he had all the facts before him. The facts are set out in the documents which are in part I of the record of appeal. In our view there was sufficient evidence on which the learned Chief Justice could exercise his discretion and grant the extension.

It is finally submitted that the learned Chief Justice wrongly exercised his discretion in that by granting the extension of time an